

Holme Roberts & Owen LLP

June 21, 2000

VIA FACSIMILE

Max Dodson
Assistant Regional Administrator
United States Environmental Protection Agency
Region 8
999 18th Street, Suite 500
Denver, CO 80202

Re: EPA & DEQ Comments to Grace's Draft Work Plan

Kenneth W. Lund
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Dear Mr. Dodson:

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Grace has completed its analysis of EPA & DEQ comments provided to Grace on June 16, 2000. As a general matter, Grace has some very serious concerns about several of the comments – some of which conflict, and other of which introduce new work not contemplated in any draft Statements of Work or prior discussions between EPA and Grace. Grace has requested a meeting with EPA to discuss these matters prior to submitting any additional revisions to the work plan. EPA has agreed to such a meeting and is in the process of scheduling the specific time and location.

EPA's criticism of Grace's draft work plan submitted to EPA on June 6th was unfairly severe, in light of the facts as we see them. Several matters clearly require correction.

First, Grace was provided with no inside or advance information regarding the scope of the work, *if any*, that Grace would be required to perform at the site. EPA specifically counseled Grace to take no advance action regarding UAO until the UAO was made official and delivered to Grace by EPA. In this context, prior discussions with EPA about the final scope of work were of little value in trying to begin work in advance. Indeed, the UAO ultimately required Grace to perform only a fraction of the work initially discussed by the parties. While Grace appreciates the advice given by EPA, we were quite surprised to be criticized by Mr. Peronard for actually heeding EPA's advice.

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Secondly, in USR's discussions with Mr. Peronard leading up to our Draft Work Plan submission, Mr. Peronard allowed Grace to submit several ancillary plans "at a later date". Any expression by Mr. Peronard of official disappointment that our work plan was incomplete is perplexing. We will be providing ancillary plans to EPA as soon as possible. Some plans cannot be completed due to the need for survey work and a determination of an appropriate disposal site, however we will submit all such plans in as complete a form as possible in order to facilitate a more rapid review by EPA.

Finally, Mr. Peronard's criticism of Grace for failure to submit building decontamination plans was fair. However, this simple oversight (along with other EPA "disappointments") would have been easily cured by a phone call alerting Grace to the issue. EPA needlessly waited 10 days to inform us of this omission – and we certainly would have appreciated the opportunity to be spared the invective. It is clear Grace and EPA are both under pressure to accomplish their respective work with tight seasonal deadlines, so more mistakes on both sides are likely to occur. How EPA and Grace handle such errors will define our relationship going forward.

In that spirit, we'd like to take this opportunity to point out the significant issues which must be addressed in the meeting we have requested. This list, provided as an enclosure, is not an exhaustive list of all issues we need to discuss in order to complete the work plan, but it should provide a helpful structure for the meeting.

We thank EPA for the opportunity to present the above facts. We look forward to completing the work in Libby.

Sincerely,



Kenneth W. Lund

KWL:ls1
cc: Matthew Cohn
Enclosure

SUBJECTS OF DISCUSSION

for Upcoming Meeting

DEQ's Role

EPA provided DEQ comments to Grace without any guidance regarding EPA's endorsement or agreement with such comments. Since some comments require DEQ approval of work items, or the presence of DEQ in meetings, this represents to Grace a usurpation of EPA's authority which could lead to unintended violations of the UAO. The role of DEQ must be defined by EPA, and integrated (if appropriate) in the various plans as EPA requires.

Building Decontamination and Demolition

EPA's long-standing regulations regarding asbestos abatement in buildings are clear. Grace need not remove asbestos from all buildings, and management in place by encapsulation is a universally accepted alternative. If the buildings pass final clearance under EPA's existing protocols, Grace expects EPA to allow the buildings to stand.

Demands for extensive confirmatory wipe sampling of equipment and supplies in the buildings are contrary to existing regulations and are an unjustified expense. Such requirements will certainly slow the work to a significant degree.

Conflicting and New Work Requirements

We must finalize the issues of sampling methodology for various activities and turnaround logistics. PCM is listed in comments to 2.2 as a "possible alternative", but, Grace intends to specify this method (where appropriate) in its next draft. In addition, EPA must provide guidance to Grace regarding qualifying contractors asked to perform ISO 10312 counting. We know of no contractor certified to perform such novel work.

We need to discuss the requirements regarding ARARs. Some ARARs dictate coordination between governmental agencies, which Grace cannot control. Complete ARAR compliance may impact schedules imposed by EPA. Guidance is required to balance ARAR compliance with EPA's goals under the UAO.

The disposal site is directed by DEQ in certain instances to be the mine site. EPA in most cases allows Grace to determine the disposal site, however on many occasions it presumes disposal at the mine site as well.

DEQ is requiring new disposal and stockpiling activities to take place at the mine site. These contradict EPA's previous instruction, yet EPA has taken no position regarding such mandates.

EPA and DEQ have yet to provide Grace with any written assurances that use of the mine site by Grace for disposal purposes is acceptable to the respective agencies, nor has indemnification been provided to Grace by either agency for such use.

DEQ is requiring the submission of a mine site closure plan for "the entire mine site" [emphasis supplied]. This requirement is new and will require extensive discussion by all parties concerned.